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Should Citizenship be for Sale?

edited by Ayelet Shachar and Rainer Bauböck

European University Institute
Robert Schuman Centre for Advanced Studies
European Union Democracy Observatory on Citizenship

Should Citizenship be for Sale?

Ayelet Shachar and Rainer Bauböck

EUI Working Paper **RSCAS** 2014/01

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EUDO CITIZENSHIP is part of the European Union Democracy Observatory and publishes two kinds of working papers: (1) peer reviewed and previously unpublished manuscripts on topics of citizenship laws and policies covered by the observatory and (2) collections of edited contributions to EUDO CITIZENSHIP Forum Debates. For more information, visit our website at <http://eudo-citizenship.eu>

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Abstract

On 12 November 2013 the Maltese Parliament decided to offer Maltese and European citizenship at the price of € 650,000, but implementation of the law has been postponed due to strong domestic and international critiques. On 23 December, the Maltese government announced [significant amendments](#), including a higher total amount of € 1,150,000, part of which has to be invested in real estate and government bonds. Several other European states have adopted 'golden passport' programmes. Should citizenship be for sale? In November 2013 EUDO CITIZENSHIP invited Ayelet Shachar of the University of Toronto Law School to open a debate on these controversial policies. Twelve authors have contributed short commentaries, most of which refer to the initial law adopted by the Maltese Parliament. An executive summary by Rainer Bauböck provides an overview over the main questions raised in our forum. For further information on investor citizenship programmes see Jelena Dzankic's EUDO CITIZENSHIP [working paper](#) on the topic and consult the [news section](#) of our observatory.

Keywords

Citizenship acquisition, investor citizenship programmes, European citizenship, commodification, Malta.

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Summary: Global, European and National Questions about the Price of Citizenship

Rainer Bauböck*

The EUDO CITIZENSHIP forum “Should citizenship be for Sale?” has collected comments representing a wide range of views and some highly original arguments. They can be summarised by distinguishing global, European and national perspectives.

(1) Global questions

From a global perspective, several authors argue that citizenship has become primarily a resource for mobility. Globalisation has already deeply undermined national citizenship as a bond between individuals and states and the sale of passports is just a symptom of an irreversible commodification of citizenship (Spiro). The primary value of citizenship lies in the mobility rights attached to passports. The high price put by the Maltese Parliament on Maltese passports reflects the instrumental value of free movement rights attached to EU citizenship for the wealthy and mobile global elites.

Some authors defend the sale of citizenship by pointing out that it is less arbitrary and more transparent than other ways of acquiring citizenship (e.g. Kochenov), while others suggest that giving the ultra-rich privileged access to “global mobility corridors” (Barbulescu) raises concerns about fairness and justice (e.g. Owen). Instead of offering their citizenship for money, democratic states could bestow it on persons who are threatened by persecution or who fight for democratic values as a means of protection or exit option (Paskalev).

(2) European questions

Several comments emphasize that selling EU passports amounts to free-riding on the shared EU assets of free internal movement and external visa-waiver agreements created jointly by all Member States (e.g. Magni-Berton). Investor-citizenship programmes are, however, not the only instance. Many EU countries offer privileged access to EU citizenship to large populations outside the EU territory on grounds of distant ancestry or co-ethnic identity, obliging thereby all other Member States to admit immigrants from third countries to their territories and labour markets as EU citizens (e.g. Shaw).

Since EU citizenship is derived from Member State nationality and determining the latter remains an exclusive competence of Member States, EU law does not provide much leverage against either the sale of EU passports or other policies of creating new EU citizens without genuine links to any EU country. Several authors raise, however, the question whether the principle of proportionality established by the Court of Justice of the EU if withdrawal of Member State nationality leads to a loss of EU citizenship could also be applied to national rules regulating the acquisition of citizenship (Shaw, Shachar, Swoboda).

Independently of the issue of legality these authors suggest that the European Parliament is the institution that is best suited for addressing the issue. Instead of asking for intervention against particular Member States, they call for a broader debate on shared principles that ought to guide Member State policies in matters of citizenship.

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(3) National questions

Most authors in our forum defend a conception of citizenship as membership in a democratic community. From this perspective, selling membership seems odious in the same way that selling the franchise in elections is (Shachar, Bauböck). Citizenship is considered as the kind of good that money should not be able to buy (Ochoa).

Magni-Berton argues, however, that monetary investment can be a way of contributing to the common good of a political community and should therefore not be summarily dismissed as a legitimate reason for acquiring citizenship. In his view, the high price indicates the real problem, which is artificial scarcity created through exclusionary rules for access to national citizenship.

Authors disagree on whether citizenship acquisition based on purchase or investment is more arbitrary than the common rules of *ius sanguinis*, *ius soli* or residence-based naturalisation. Some consider all of these membership mechanisms as essentially arbitrary or discriminatory (e.g. Armstrong, Kochenov), whereas Bauböck defends them as supporting equal membership in intergenerational communities.

From a global justice perspective, “golden residence programmes” that provide investors with privileged access to permanent residence status seem to be just as unfair towards the poor as “golden passport programmes”. From a democratic citizenship perspective, however, the former are less problematic since they maintain a condition of residence and thus a “genuine link test” for access to citizenship (e.g. Dzankic, Shachar, Owen).

Other authors acknowledge that states have legitimate interests in “inviting the rich, the beautiful and the smart” (Kochenov) and that investor citizenship is not essentially different from the widespread practice of offering citizenship to prominent sportsmen and –women (Owen). Chris Armstrong observes that some states offer citizenship to foreigners who have served in their army or have otherwise provided exceptional service to the country. If investors really help to save a country from financial breakdown, offering them citizenship may be justified on grounds of emergency relief. Other authors are, however, sceptical that those who are only interested in additional mobility rights can be made to invest their wealth permanently and productively (Dzankic).

Apart from the lack of a “genuine link” criterion, a global market for citizenship status is also seen as corrupting democracy by breaking down the wall that separates the spheres of money and power. Several contributions argue that there is a broader trend towards relinking citizenship acquisition to social class, which manifests itself, on the one hand, in offering citizenship to the rich and, on the other hand, in income and knowledge tests for ordinary naturalisations of foreign residents (Shachar, Barbulescu, Dzankic, Bauböck, Owen, Swoboda).

Dangerous Liaisons: Money and Citizenship

Ayelet Shachar*

Vogue predictions that citizenship is diminishing in relevance or perhaps even vanishing outright, popular among jetsetters who already possess full membership status in affluent democracies, have failed to reach many applicants still knocking on the doors of well-off polities. One can excuse the world's destitute, those who are willing to risk their lives in search of the promised lands of migration in Europe or America, for not yet having heard the prophecies about citizenship's decline. But the same is not true for the well-heeled who are increasingly active in the market for citizenship: the ultra-rich from the rest of the world. They are willing to dish out hundreds of thousands of dollars to gain a freshly-minted passport in their new "home country." That this demand exists is not fully surprising given that this is a world of regulated mobility and unequal opportunity, and a world where not all passports are treated equally at border crossings. Rapid processes of market expansionism have now reached what for many is the most sacrosanct non-market good: membership in a political community. More puzzling is the willingness of governments – our public trustees and legal guardians of citizenship – to engage in processes that come very close to, and in some cases cannot be described as anything but, the sale and barter of membership goods in exchange for a hefty bank wire transfer or large stack of cash.

Everybody knows that immigration is among the most contentious policy issues of our times, and recent years have witnessed a "restrictive turn" (Joppke 2007; Orgad 2010) with respect to ordinary immigration and naturalisation applicants, such as those who enter on the basis of a family reunification claim or for humanitarian reasons. The situation is different, however, for the world's moneyed elite, who can sidestep many of the standard requirements for settlement by "buying" their way into the political community. The public act of naturalisation – of turning a non-member into a citizen – has always borne an air of legal magic, with the result that it is the "most densely regulated and most politicized aspect of citizenship laws" (Bauböck and Goodman 2010: 1). At stake is the regulation of the most important and sensitive decision that any political community faces: how to define who belongs, or ought to belong, within its circle of members. Not everyone knows, however, that governments are now proactively facilitating faster and smoother access to citizenship for those who can pay. Revealing insights about the current state of citizenship can be gained, I will argue in this short essay, by examining who is given this red-carpet treatment, and on what basis.

Consider the following examples. Affluent foreign investors were offered citizenship in Cyprus as "compensation" for their Cypriot bank account deposit losses. In 2012, Portugal introduced a "golden residence permit" to attract real estate and other investments by well-to-do individuals seeking a foothold in the EU. Spain recently adopted a similar plan. On 12 November 2013, Malta approved amendments to its Citizenship Act that put in place a new individual investor legal category that will allow high-net-worth applicants to gain a "golden passport" in return for € 650,000. Under these cash-for-passport programmes, many of the requirements that ordinarily apply to those seeking naturalisation, such as language competency, extended residency periods or renunciation of another citizenship, are waived as part of an active competition, if not an outright bidding war, to attract the ultra-rich. Portugal, for example, offers a fast track for qualified applicants that entitles them to a 5 year permanent residence permit, visa-free travel in Schengen countries, the right to bring in their immediate family members, and ultimately the right to acquire Portuguese citizenship and with it the benefits of EU citizenship. This package comes with a hefty price tag: a capital transfer investment of € 1 million, a real estate property purchase at a value of € 500,000, or the creation of local jobs. The investment needs to remain active in Portugal for the programme's duration. Alas, the individual who gains the golden permit bears no similar obligation. Simply spending 7 days in Portugal during the

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first year and fourteen days in the subsequent years is enough to fulfil the programme's requirements. So much for the conclusion of the International Court of Justice in the 1955 *Nottebohm* decision that "real and effective ties" between the individual and the state are expected to undergird the grant of citizenship.

In Malta, recipients of the golden passport will be vetted in accordance with a discretionary ministerial act that puts in place little transparency and accountability. Government officials have made clear that applicants can expect an expedited treatment, meaning that they will not have to "stand in the queue" like everyone else. In addition, the names of golden passport recipients would remain confidential, making it close to impossible ever to know to whom the polity has sold a precious part of its soul. This last provision has raised the ire of the opposition. Their concern is that concealing the identity of those who gain membership by literally purchasing citizenship makes it so that "Maltese [a]re now being denied the right to know who is Maltese" (Malta Today 2013). The secrecy provision was eventually withdrawn in the eleventh hour, but the basic structure of the programme remains intact: privileged and fast-track naturalisation, allowing "any Tom, Dick and Harry ... [to] buy a Maltese passport without ever setting foot on Maltese soil." A recent survey shows that the vast majority of the population opposes the sale of citizenship in principle, and rejects this scheme in particular, detached as it is from any residence or other requirements that would establish ties with the passport-granting country and society.

Beyond Europe, those seeking a new passport can look to St. Kitts and Nevis, where economic citizenship can be purchased for as low as \$ 250,000 (for a lump sum) or \$ 400,000 (if monies are directed to a real estate project), and issued within months. They might also consider Antigua and Barbuda, which is the latest in a growing list of countries to roll out a citizenship-by-investment programme or the Commonwealth of Dominica. Whereas ordinarily the law requires significant residence periods for those seeking naturalisation in these island nations (fourteen years in St Kitts and Nevis, seven years in the Commonwealth of Dominica and in Antigua and Barbuda, respectively), the residency requirement is reduced to merely seven days – a short vacation under the tropical sun – or even waived altogether for those who purchase their fast-tracked passport.

The citizenship-by-investment programmes that I have just described fall into the category of what we might call unfettered cash-for-passport exchanges. No "*nexi*" between the country and the passport recipient are required; only the investment monies must "reside" in the country for a fixed term. This is to be distinguished from more traditional programmes, themselves the subject of perennial critique, under which migrant millionaires (to borrow David Ley's apt term) can receive an admission visa through a designated business-investment stream, but would then have to more or less comply with standard residency and naturalisation requirements (Dzankic 2012). Such programmes are found in, among other places, Australia, New Zealand, Hong Kong, the United Kingdom and the United States. Both kinds of programme raise serious ethical quandaries, but the unfettered cash-for-passport programmes are far more extreme and blatant than the traditional investment programmes. They contribute to some of the most disturbing developments in 21st-century citizenship, including the emergence of new forms of inequality and stratification. Instead of retreating to the background as some theorists had forecasted, states are proactively creating and exacerbating inequalities through their selective and managed migration policies, setting up easy-pass citizenship for some while making membership more restrictive and difficult to achieve for others. This new world order reveals tectonic pressures and introduces urgent dilemmas about the proper scale, scope and relations of justice and mobility, citizenship and (selective) openness. These developments also bear a profound impact on immigration law and policy on the ground, since they entail processes through which the boundary between state and market is constantly being tested, eroded, and blurred.

It is these intricate and underexplored interactions between state and market that are at the heart of my inquiry into emerging selective migration regimes and transactional visions of citizenship (Shachar 2006; Shachar forthcoming). Legally, the sovereign prerogative to issue a valid and internationally recognised passport is reserved in our international system to states alone. Governments and only

governments – not markets – can secure and allocate the precious legal good of membership in the political community. But what happens when the logic of capital and markets infiltrates this classic statist expression of sovereignty? The proliferation of what I have called unfettered cash-for-passport programmes is a dramatic example of this pattern at work and it invites our critical scrutiny, especially since governments that use these programmes often do so in the name of advancing their country's national interest while paradoxically setting up dangerous connections between money and access to citizenship, possibly to the detriment of the basic egalitarian and participatory thrust of political membership as we currently know it. These developments raise core ethical and legal questions. Why are states putting citizenship up for sale? And what precisely is wrong with easy-pass naturalisation along the lines of the cash-for-passport programmes? Is it the queue jumping? The attaching of a price tag to citizenship? The erosion of something foundational about political membership itself? Or, perhaps, all of the above?

Surely, zealous free-marketeers will enthusiastically defend such programmes as freeing us from the shackles of culture, nation and tradition and moving citizenship forward to a new and more competitive global age of transactional contracting in which, as Nobel Prize laureate Gary Becker once put it, a price mechanism substitutes for the complicated criteria that now determine legal entry (Becker 1992). As much as Becker would like to deny it, though, these programmes have something of a “whiff of scandal” not only due to frequent accusations of money laundering and fraud (Economist 2013), but also because of something deeper and more profound. Citizenship as we know it (at least since Aristotle) is comprised of *political* relations; as such, it is expected to both reflect and generate a notion of participation, co-governance, and a degree of solidarity among those included within the body politic. It is difficult to imagine how these values could be preserved under circumstances in which insiders and outsiders are distinguished merely by the ability to pay a certain price. The objection here is to the notion that *everything*, including political membership, is “commensurable” and reducible to a dollar value. This is what makes cash-for-passport exchanges, even if they account for only a limited stream or quota of entrants per year, deeply problematic and objectionable. The sale and barter of citizenship, even if initially reserved only for a small stream of recipients, nevertheless sends a loud and unmistakable message in both law and social ethics about whom the contemporary market-friendly state gives priority to in the immigration and naturalisation line and whom it covets most as a future citizen. This expressive conduct and the new grammar of market-infused valuation it entails tell us something important about the volatile state of citizenship today and the direction in which we may be heading.

Although economists will be quick to note that cash-for-passport programmes can create a hefty stream of revenue for governments, this is a hardly a strong enough justification to endorse them. The desire to enlarge their coffers may, as a matter of real-life experience, explain why some countries offer these programmes. From a normative perspective, however, such an exchange threatens to corrupt the good that is put on sale: what changes when we “sell” citizenship is not just the price tag of membership, but its substantive content as well. As it plays a more and more important role in countries' immigration and naturalisation policies and priorities, citizenship-for-sale may also gradually reshape the greater class of those who are likely to enjoy political membership. Reliance on a price mechanism alone, to the exclusion of other important considerations, would not only prevent the vast majority of the world's population from ever gaining a chance to access citizenship in well-off polities. Taken to its logical conclusion (as *reductio*) it might also lead, corrosively and over time, to a world where *anyone* included in the pool of members must pay up, or risk “falling helplessly to the wayside” (Spiro 2008, 134).

Several scholars have taken up the task of imagining how our world might look were the market – rather than the state – to govern access to, and the acquisition of, political membership. As one study explains, “[i]f we take the basic incidents of citizenship to be protection of members and participation in modes of governance, the market for citizenship could form around offer of and demand for these services. Indeed, the offer of broader packages of citizenship services would be the basis for product

differentiation” (Downes and Janda 1998, 55). “Product differentiation,” it should be noted, is a euphemism for providing lesser rights and services in exchange for lower fees (Jordan and Düvell 2003). Farewell, then, to the hard-earned ideal of inclusive citizenship as equal membership. In its absence, auction mechanisms and supply-and-demand rules may well replace our (however imperfect) procedures of exerting some degree of democratic governance and collective decision-making on what it means to belong to a political community, how to obtain a secure legal status of citizenship, and on what conditions.

Even staunch defenders of the market approach to citizenship understand that they are facing a hard sell. Becker, for one, admits that “people object to the sale of permits because, as they say, ‘citizenship is not to be for sale’” (Becker 1992), and this is a moral intuition that runs deep. As evidenced by recent debates over the instalment of cash-for-passport programmes, most people have strong reservations against attaching a price tag to citizenship (Borna and Stearns 2002: 197). The reasons are many. As already mentioned, such a move may cause irreparable harm to the vision of citizenship as grounded in long-term relations of trust and shared responsibility and may prefigure the conflation of the political and ethical with the economic and calculative. It may also undermine membership bonds grounded in co-authorship, cross-subsidisation of risk, and even sacrifice that might be expected in times of need. What is more, citizenship currently involves making collective decisions, and translating those decisions into binding commitments, in the context of a political project that is far larger than oneself, and that extends well beyond the lifespan of each generation of members – a time horizon that will be extremely hard to sustain under a regime of strategic transactions, according to which “wealth buys membership.” Turning citizenship into a money-based prize also contradicts any notion of complex equality through blocked exchange according to which advantage in one sphere (here, wealth) cannot be legitimately transferred to another (in this case, membership) (Walzer 1983). This makes the idea of selling membership unnerving for anyone who objects to the ultimate triumph of economics over politics, the reduction of our public life and ethics into mere pecuniary transactions, or the imperialistic idea that “trades” occupy the full terrain of human value and meaning (Radin 1987; Sunstein 1997; Sandel 2013).

Another set of concerns arises in the context of supranational citizenship, as in the derivative structure of European citizenship. The actions of those member states that take the liberty to put their national citizenship “on sale” indirectly affects the supranational political membership good that is shared by other countries, which may resist such commodification. There are also complex questions about *to whom* (beyond its own citizenry) the transacting government is obliged to provide justificatory reasons concerning its selective admission and naturalisation policies. Need it justify itself to other member states? To the Commission of the European Union? To would-be entrants who might have had a shot at admission through standard migration streams (family, employment, and humanitarian) but who are priced out of the advantage given to those who can afford a “golden passport”? From a global perspective, cash-for-passport programmes clearly exacerbate pre-existing inequalities rather than alleviate them. Should the sedentary populations of the migrant millionaires’ countries of origin, which are typically less stable or poorer than the destination countries, get to weigh in as well? Or, if an expansive all-affected-interests principle is applied, perhaps anyone at all who may be unfairly and arbitrarily affected should have a voice in these decisions (Goodin 2007). And what about migrants who are already settled in the country but ineligible to benefit from naturalisation schemes that require no knowledge or familiarity with the political structures, main civic institutions, history or language of the country, and who are subject instead to ever more demanding civic integration requirements? If civic integration is a required precondition to the bestowment of full membership by the state (as restrictive citizenship tests increasingly indicate), how can this demand only apply to some and not to others?

After all, there is no rational connection between delivering a stack of cash or sending in a bank wire transfer and establishing the kind of participation and equal standing among fellow citizens that the political bonds of membership are meant to represent and foster. From this vantage point, the

transaction in citizenship, even if carefully regulated and implemented by monopolistic governments or their authorised delegates, should be prohibited. Taken to its dystopian extreme, this approach may lead to a situation whereby the size of their wallets, and nothing else, distinguishes suitable from unsuitable candidates for initial entry and eventual citizenship. This kind of transaction, as lawyers and philosophers like to put it, is value-degrading: the trading in citizenship “taints,” “degrades” or outrightly “corrupts” (in the moral sense) its value as a good. We might in the same vein say that these cash-for-citizenship programmes detrimentally affect the “character of the goods themselves and the norms that should govern them” (Sandel 2012, 113). As critics of commodification have been at pains to clarify in other contexts (Cohen 2003), it is not that € 650,000 is too high or too low a price, but that placing a “for sale” tag on citizenship, no matter what amount is written on it, has a corrosive effect on non-market relations, eroding the ties that bind and altering our view of what it means to belong to a political community. Just as I think we should be critical of granting citizenship according to nothing but the fortuitous and arbitrary circumstances of station of birth (Shachar 2009; Shachar 2011), I believe we must resist, with even greater force, the notion that money can buy “love of country” – or secure membership in it.

If governments and activists are listening, they should heed the warning signs. The ideal of equal citizenship has been inflicted with many wounds over the past decades, and has always been more of an aspiration than a reality. However, the dangerous and increasingly frequent links between money and access to political membership reflected in the more calculated, mercantilist-like perceptions of citizenship that have given rise to unfettered cash-for-passport programmes threaten not only the implementation of the ideal, but the ideal itself. Courting the world’s moneyed elite by relaxing standard admission and naturalisation requirements may enrich the coffers of a country in the short run, but in the long haul it risks cheapening something far more important: citizenship itself.

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Cash-for-passports and the end of citizenship

Peter Spiro*

Investor citizenship programmes are becoming increasingly commonplace in state practice. What was once the province of outlier Caribbean microstates is gaining traction among more substantial states. As an instrumental tool, states see citizenship-for-sale as a way to help get out of an economic hole on the cheap. There is no marginal material cost to minting new citizens, especially those with deep enough pockets to afford the price of admission. Hence the adoption of investor citizenship programmes by such countries as Cyprus, Malta, and Portugal.

I sympathise with Ayelet Shachar's powerful framing of these programmes. There is something unseemly, at least, about putting membership in the polity up for sale. Cash-for-passports, as Shachar derisively labels the phenomenon, clashes with our received understandings of citizenship as a marker of social solidarity in a Walzerian sense. The emerging market for citizenship literally commodifies the status, the tip of an iceberg that Shachar is describing in other work as states come to see immigration as a talent-pool competition.

But where Shachar sees investor citizenship programmes as a threat to robust citizenship ties, I see them more as a manifestation of citizenship that is already being hollowed out. If citizenship still meant what it used to mean, if it still represented special ties as a sociological matter, then investor citizenship schemes would not exist. In that context, citizenship-for-sale would have implicated serious symbolic societal costs by breaking the social contract, understood not as an arm's-length market transaction but rather as the locus of morally-inflected rights and responsibilities. In the old world, such programmes would have been inconceivable.

Today, far from inconceivable, they are becoming an accepted element of strategic immigration policy. Investor citizenship programmes remain controversial (perhaps especially in a small, distinctive society such as Malta, which may more represent the old norm rather the new). But they are obviously gaining traction. States have something to sell. There must be some sentiment in adopting states that the revenues will exceed costs, social or otherwise.

Investor programmes give the lie to notion that citizenship is sacred, in a civic sense. The programmes evidence the descent of citizenship from its former pedestal. Shachar extols a "vision of citizenship as grounded in long-term relations of trust and shared responsibility, ... membership bonds grounded in co-authorship, cross-subsidisation of risk, and even sacrifice that might be expected in times of need." That's the citizenship of the past, and passport-for-sale schemes supply another data point to prove it.

This is so notwithstanding externalities imposed on other states. In some contexts, these externalities will be miniscule (a citizen of Malta can travel to the United States visa free where the citizen of Russia cannot, but the numbers will be low, and the number who abuse visa-free entry will be even lower). In the European context they are potentially greater, as the EU member states become subject to lowest-common-denominator citizenship policies. Those who buy Maltese citizenship are less likely to settle in Valletta (one wonders how many could even name the capital city before – or perhaps even after – they have made the purchase) than in Berlin or Paris or London. When one buys Maltese citizenship one gets EU citizenship included in the price; it opens a backdoor to the rest of Europe. But the EU seems unlikely to complain. There is no legal basis for opposition, citizenship policy remaining exclusively within Member State discretion. Nor is there likely to be much pushback as a policy matter, so long as the price is high enough to depress numbers and maintain economic quality (as it were).

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In material terms, the programmes are not much of a threat to provider states, either. The numbers will be low. (Portugal had only 330 takers in the first year of its program.) Because many buyers will remain non-resident, they will be invisible to the existing citizenry. They will not be politically engaged, to the extent they will feel no interest beyond protection of their bought-and-paid status. One possible cost would be with respect to diplomatic protection. It will be interesting to see whether that is a part of a bargain – whether in fact states will intercede with other states on behalf of their paying members (and whether international tribunals would recognise protection of cash-only nationals).

Shachar is correct that the investor programmes show that citizenship is still worth something. As the market thickens, we will see how much. With the reference point of states that sell permanent residency, we will be able approximately to isolate the value of citizenship itself – the premium states will be able to extract with the passport. Will investor programmes like Malta's, which offer citizenship, be priced much higher than Hungary's, which extends residency status only? (I will leave to the economists to deal with asymmetries among the various packages.) I suspect that premium will not be great, especially insofar as permanent residency includes the possibility of future eligibility for naturalisation. Finally, there is the possibility of price competition as more states enter the market and some seek to maximise revenues by attracting more buyers at a lower price point.

Investor citizenship programmes are a symptom, not a cause. Shachar sees citizenship as something that can be rescued through citizenship policy. As material forces of globalisation fragment citizens' solidarities, citizenship law cannot revive them.

Citizenship for those who invest into the future of the state is not wrong, the price is the problem

Raul Magni Berton^{*}

Roughly two thousand years ago, Roman citizenship began to be sold to rich foreigners. As a consequence, rather than a way to share equal duties and rights, citizenship by the third century C.E. had become an aristocratic title. It divided people instead of rallying them. It increased inequalities instead of reducing them.

The current situation is somewhat similar. Rich people have access to rich countries' membership, and poor people remain on the wrong side. Thus, I sympathise with Shachar's concerns and I think we should avoid to reproduce what we have already experimented in our ancient history.

However, I do not agree with the way in which both Shachar and Spiro have identified the problem. Consider, for example, a situation in which a foreigner asks for access to citizenship in those terms: "I want to share the responsibility of my failures and achievements with you, and I'd like to invest in you and to be partly responsible of your achievements and your failures." This is a touching statement of solidarity and identification with a group. I have called it the stockholder principle: individual citizens are like a joint-stock company in which fellow-citizens invest. The consequence of these collective investments is a shared responsibility for individuals' achievements. Moreover, the right to benefit from public support is associated with the duty to invest in other fellow-citizens' life projects. These duties are embodied in specific taxes for public investment. Thus, each citizen is also a stockholder with respect to other citizens.

Thus I would not say that the Maltese Parliament voted to "sell" the Maltese passport when it granted citizenship for € 650,000. From a foreign investor's point of view, given that she makes the above statement and is ready to invest in the future of Maltese citizens, she acquires a moral claim to become citizen. She does not only give a sum of money in exchange for rights; she also becomes more largely committed to the duties of a Maltese citizen. In other words, she gains access to the Maltese nationality with an investment, which is a way to link her destiny to that of other Maltese.

So what is wrong with this beautiful story? Why are the Maltese people sceptical and why is international opinion critical? Of course, we could agree that the argument of externalities, mentioned by Shachar, is relevant: European citizens should also benefit from those new investments. Thus, the problem is identifying who decides the allocation of those investments: the government of Malta or the EU. Although these externalities are expected to be low, as Spiro points out, it can be argued that Maltese citizens free-ride because they alone benefit from the foreigners' will to become European, and this could be morally disputable.

Beyond that, the main argument I would like to develop here is that € 650,000 seems, at first sight, a lot. Not in absolute terms, of course. Suppose, for example, a society in which people spend € 200 on watching a film. Several other things are likely to be true in such a society. Firstly, there are some people that can afford to pay this price. Secondly, there are no other less expensive goods which are substitutable, such as for example theatre, sport or other entertainment. Perhaps this is because technological progress has improved cinema so that it delivers a specific pleasure one cannot find elsewhere. Alternatively, this may happen because theatres or circuses have simply gone bankrupt.

Analogically, in the case of naturalisation, several other things are likely to be true in virtue of the fact that people prefer to pay a considerable amount of money, rather than to proceed with alternatives. For example, in a society where people are ready to pay € 650,000 for a passport, many of these alternatives are likely to be extremely burdensome, impractical, or unfair.

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Let me assume that, until now, the Maltese way to naturalise foreigners has been fair according to the stockholder principle. In other words, a “poor foreigner” can be naturalised, if she is ready to share the responsibility for her failures and achievements with Maltese citizens, as well as to invest in them and become partly responsible for their achievements and failures. Under this assumption, investing money in Malta, whatever the amount, is one fair way, among others, to gain access to citizenship. There is no reason, after all, to distinguish between financial and human investments.

But, if the Maltese law was fair, people would not be likely to invest € 650,000 to be naturalised. Of course, they could love Malta. They also could be so wealthy that they prefer to pay this amount rather than spend time in human investments. More probably, however, the fact that people are ready to pay this amount reveals that the law is in fact too restrictive and does not provide other reasonable ways to become citizen.

Naturalisation in Malta is possible after five years of residence, but it includes discretionary conditions, the severity of which can vary across time. In other European countries specific conditions and varying periods of residence are required. The greater the severity, the greater the price for passports. Investor citizenship programmes should be used to create a fruitful community, not to maximise price.

To conclude, I do not believe that investor citizenship programmes in themselves are unfair. On the contrary, they can reveal, via a financial argument, how hard the naturalisation process is. All European countries are concerned with this issue: too restrictive laws prevent motivated people to give their contribution to the host country and they divide humanity into rich and poor, rather than into different united groups. Exactly as the Roman Empire did.

The Price of Selling Citizenship

Chris Armstrong*

Malta's decision to sell citizenship triggers strong reactions in many of us. It appears to connect wrongfully the awarding of citizenship to ability to pay. And as Ayelet Shachar's contribution points out, it disregards the other things that theorists often emphasise as key to citizenship acquisition: rootedness in a community, interaction with its institutions, long-standing residence, or participation in its political life.

On the other hand, we might ask, can these other things *always* be necessary criteria for awarding citizenship? Imagine that our country is waging a desperate war of self-defence. Just when defeat – and the collapse of our community – appears inevitable, a force of foreign volunteers enters the fray and swings the result in our favour. These volunteers have performed a tremendous service to our community – perhaps the greatest service we can imagine.

Imagine, next, that we decide to thank the volunteers by offering them citizenship in our country. Would this be morally repugnant? Far from it: the decision would, I think, be perfectly appropriate. What, then, of rootedness, interaction, residence, or participation? If giving citizenship to our imaginary volunteers is appropriate, then those things cannot be as important as we thought. Perhaps a massive, one-off contribution to the polity can be enough.

We might think the Maltese example is very different, of course. What we object to here is the selling of citizenship, because this involves a *contract* which puts a value on the connection between citizen and community. Perhaps such 'deals' should never be made.

I'm not so sure. We can tweak the war example so that volunteers are not forthcoming, and our country still faces annihilation. We then *ask* for volunteers, promising to grant citizenship as a reward for their services. Obviously, this looks less palatable than the original example, because instead of a selfless sacrifice we now have a rather self-interested deal. Still, would it be wrong for our country to offer this deal? It seems to me that, though it might make some of us uncomfortable, the answer is no. Perhaps a country can be in such dire straits that such deals are, all-things-considered, an acceptable way of proceeding. But if *that* is true, what if the straits are financial ones, and the deal in question is, simply, the selling of citizenship?

I suspect that selling citizenship is perhaps not *always* wrong, even if it often would be. In the rest of this response I set out five reasons, though, for restricting the sale of citizenship. Some of these concerns can be avoided. Others remain genuine worries. But the *way* they ought to concern us is interesting, because they suggest that what is *wrong* with selling citizenship also applies to other instances of citizenship acquisition. Perhaps, then, selling citizenship is just the most visible case of a wider phenomenon. Perhaps, for all its blatancy, it is not even the most important case.

1. What if selling citizenship has not been democratically authorised (or, as Shachar suggests, it is veiled in secrecy), whereas if 'the people' had been properly consulted on it, they would not have endorsed such a policy? (A survey shortly before the decision showed 53% disapproval.) We know that citizens often feel their views are very poorly represented in policies on immigration. Then again, putting great weight on popular views about immigration may be unwise: those views are often hostile to immigration *in general*, and also, at the same time, often very badly informed. But regardless, this objection is a contingent one, and leaves open the deeper question: if the public *did* authorise selling citizenship, would there be anything wrong with doing so?

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2. Perhaps admitting the kind of people who can afford to spend hundreds of thousands of Euros buying citizenship is unwise. Those (rich) people will probably turn out to wield disproportionate influence on domestic politics. We have every reason to fear their influence. But if this is so, it is not an objection to *selling* citizenship. It is an objection, surely, to *granting* citizenship to very rich individuals whether they pay for it or not. It would apply just as strongly to a policy which made it *easier* for rich individuals to access citizenship (free of charge). Less obviously, liberal democracies standardly grant automatic citizenship to the children of native citizens, some of whom also happen to inherit great wealth. Isn't *their* wealth a problem too? Isn't it just as large a danger to democracy?

3. Perhaps it is unfair to allow people to buy citizenship, because other less fortunate outsiders are thereby disadvantaged. The playing-field is simply not even. If so, the same response follows: this is an objection not to *selling* citizenship, but to making it easier for anyone to obtain citizenship merely because they are wealthier or, indeed, because they possess 'desirable' skills. Selling citizenship is only a very visible instance of wider distributive unfairness in allocating citizenship. It may not be the most important example.

4. Perhaps selling citizenship cheapens that 'good', and, as Shachar rightly points out, sends a terrible signal to existing citizens about what makes a good citizen. This is, I agree, a profound concern, but we can respond in the same way as to the last objection. *Any* policy which makes it more likely that some, rather than others, will be admitted to citizenship sends such a signal. A policy which makes it easier for wealthier or more highly-skilled people to obtain citizenship sends just the same signal. If the objection is a good one, its implications ripple beyond the mere selling of citizenship.

5. Finally, we might object that what Malta is doing is unfair to other EU member states, since all of those states potentially bear the *costs* of granting citizenship to outsiders, but only Malta reaps the *benefits*. This, I suspect, is at the heart of much of the resistance to what Malta is doing. But several responses can be made. First, this objection obviously applies only to EU-members states. Second, for an EU member state to link citizenship to buying property or investing in their country should be equally objectionable. Third, and more importantly, we can point to ripple effects again. If it is wrong for one state to pursue a citizenship policy which delivers benefits to itself but imposes costs on others, what *else* might fall foul of that principle? What about countries that attract wealthy citizens of other states by offering them lower taxes and make it thereby more difficult for progressively-minded states to pursue egalitarian policies? What if state competition for those wealthy individuals always imposes externalities, making progress towards a more equal world more difficult? Selling citizenship might then be, as Peter Spiro observes, merely the tip of a very large iceberg. And not necessarily the worst part.

I am not sure, in the end, that I agree with Shachar that selling citizenship is always wrong. Perhaps it is safer to say that it *usually* is, though we can imagine situations where the reverse is true. But either way, selling citizenship, even if it (often) appears repugnant, pales in comparison to many of the other inequities attendant on the ordinary transmission of citizenship, as Shachar's own work has forcefully hammered home. I am tempted to conclude precisely this: for all that selling citizenship troubles us, it might do us the considerable service of forcing us to think (more) about the way in which many people already obtain citizenship, and the way in which citizenship practices more broadly both feed off, and make it harder to tackle, underlying global inequalities. As Spiro observes, writing better citizenship laws can only be part of the solution to that problem. There are many other important ways of tackling global inequalities that deserve at least equal attention.

Global mobility corridors for the ultra-rich. The neoliberal transformation of citizenship

Roxana Barbulescu*

The problem with investment citizenship ain't that it is for sale, the problem is global inequality. Citizenship-by-investment schemes do not themselves produce injustice but they are unjust because they build on pre-existing large disparities in the world: If all countries were equal in living conditions would the scheme be objectionable? If the answer is no, as I think it is, then the source of injustice is global inequality rather than policies that do not themselves produce injustice.

In the real world, however, citizenship-by-investment together with similar schemes for residence opens global mobility corridors for the ultra-rich. In what follows I discuss how investor citizenship impacts on international migration and how it alters the institution of citizenship. I end by calling for more systematic analysis of the political conditions under which this transformation of citizenship has come about.

From an international migration perspective citizenship-by-investment is a means for opening borders, even if only for very few affluent individuals (and their families). In abstract terms, the logic is the same as with the different competitive schemes for high-skilled migrants. The latter use talent, reputation, skill, work experience, previous salary and even age as proxies for admitting only those who can make an important contribution (Shachar 2006). So do investors through their investments. The two schemes are also similar in their consequences: they both immobilise the less well-off individuals. The twin phenomena of global competition for the worlds' best and brightest and for the richest correspond to the nationalisation of poverty and the confinement of less well-off citizens within their national borders. For me, this indicates that the questions the scheme raises are indeed about global social justice and it is this problem on which states need to focus their efforts.

Here is one qualifier: many citizens of the rich countries benefit from similar privileged access to citizenship or residence in less developed countries around the world. They call themselves expats instead of migrants and often need not go through the normal immigration route. A basic state pension from the UK, for instance, can make one a particularly well-off person in the Global South. The citizenship-by-investment scheme just mirrors a worldwide state of affairs, but it is more visible because of the high threshold of capital needed for access. The fact that this matter has only now entered the citizenship debate indicates how heavily theoretical and ethical debates build on Western cases.

My second remark has to do with the profound transformation of the institution of citizenship. My point here is that citizenship-by-investment largely contradicts the very recent efforts of states to re-substantiate citizenship through tests and integration requirements (see the earlier debate hosted by this forum in [Bauböck and Joppke 2010](#)). Waiving these requirements for the ultra-rich raises serious doubts over the credentials of the previous citizenship reforms and states will need to justify why civic knowledge and other integration requirements are needed or useful and provide proof that they are something more than a filter to make immigration more selective.

The third point has to do with the fact that using capital as the sole condition for citizenship for investors (waiving requirements such as residence, language skills or ancestry) departs from traditional foundations of (national) citizenship which tended to privilege cultural and social ties. It also marks a break with the historically younger project of social citizenship which went in the opposite direction and sought to incorporate the economically disenfranchised into the citizenry (see Marshall 1973, Soysal 2012). As Peter Spiro argues in his contribution, with this revision citizenship

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aligns itself with other neoliberal and free market-inspired developments. However, such withdrawal of the state and the advancement of the free market in the traditional sphere of state sovereignty still need to be better explained rather than just diagnosed.

In the case of citizenship-by-investment, we need to understand better whether this was a supply or demand driven policy change, what stakeholder alliances lobbied for this policy, what channels they used, who set the price tag, and what arguments persuaded political elites to implement it. Neoliberalism does not spread like the flavour of a bag of tea in a cup of water: it needs promoters and legitimisation that will align support against other competing paradigms, especially in citizenship policies where there are strong path-dependency dynamics. These are important questions because citizenship-by-investment departs from citizenship traditions everywhere, because such policy revisions are largely unpopular and may have a high political cost and, not least, because they delegitimise the very existence of state bureaucracies administering citizenship for the ultra-rich. With naturalisation becoming a transaction over-the-counter, the organisation that implemented it partly loses its purpose.

So why is it important to understand how citizenship-by-investment has come about? Because of its large impact on an essential political institution and its success in carving out global mobility corridors through entangled states.

One final note: As several states have already implemented citizenship-by-investment schemes, states should quickly lose their naivety about investors as do-gooders. Those schemes that – unlike Malta's – rely on investment rather than direct payment should check that the capital is indeed invested. The UK, one of the first states to introduce Investor Visa (with a price tag of £ 1 million or a bank loan from an UK financial institution and personal assets worth 2 million) recently revised this policy as it came to its attention that investors used the capital for investment as security to back up loans and that investments were placed in offshore custody (UK Border Agency 2013: 1, revision HC 760 came into force in December 2012; see also Nathan, Rolfe and Vargas-Silva 2013).

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The Maltese Falcon, or: my Porsche for a Passport!

Jelena Dzankic*

‘We didn't exactly believe your story, Miss O'Shaughnessy. We believed your 200 dollars. I mean, you paid us more than if you had been telling us the truth, and enough more to make it all right.’ These were the words of Sam Spade played by Humphrey Bogart in the 1941 film “The Maltese Falcon”. Malta’s recent amendments to the Citizenship Act suggest that for the country’s policymakers the amount of € 650,000 is just enough ‘to make it all right’ for investors to purchase the Maltese and by extension the European Union (EU) citizenship. But is cash-for-passport really ‘all right’, and does it affect the value of citizenship?

Magni Berton suggests in his contribution to this forum that what is wrong with the Maltese law is that ordinary naturalisation is too difficult and discretionary. Indeed, for most applicants, meeting the criteria for ordinary naturalisation takes a long time and a lot of effort. During the years of residence that the applicants spend in their country of destination they make that country the focal point of their lives: they learn its language, its customs and establish social links with other citizens living there. Their claim to citizenship of that country is based – following Shachar – on *ius nexi*. Hence the integration of such individuals is of high value for citizenship as a public good, as a network of communal contributions and responsibilities, as shared love for the country.

Yet, Magni Berton claims that the rich may as well love the destination country and that money may merely be an instrument for facilitating their access to citizenship. Instead of a ‘human investment’, which would entail time, establishment of social links, and acquisition of language skills, the wealthy can make a monetary contribution. However, as highlighted in other contributions to this debate, the rich usually do not spend much time in their destination countries. Rather, as Spiro noted, they mostly use the opportunities provided to them by virtue of possessing its passport. Now, what is love in this context? The one who truly loves is willing to wait and invest time and effort. Otherwise, we would not speak about love. Offering money in exchange for practical benefits together with a claim of love sounds rather like something else. And that ‘something else’ is simply wrong.

In justifying investor citizenship programmes, Magni Berton further compares citizenship with stockholding: ‘individual citizens are like a joint-stock company in which fellow-citizens invest’. This reduces the scope of citizenship, because the interests of stockholders are determined by the share of stocks that they have in the company. In addition to this, stocks are tradable – not only from the government to an individual, but also among individuals themselves.

It makes more sense if, instead of regarding citizenship as stockholding, we compare it to stakeholding, as Bauböck (2009) has suggested. A citizen-stakeholder is a person who has a fundamental interest in membership in a particular polity (rather than in economic or other benefits for which membership may be instrumental). We can identify such stakeholder citizens by looking at how a person’s interest in autonomy and well-being are structurally linked to the collective autonomy (self-government) and well-being (flourishing) of a country. This means that those who have obtained citizenship merely on grounds of investment cannot be stakeholders, because they only have an accidental and instrumental interest in citizenship in a state that offers them a favourable investment environment.

It is worth mentioning that there are different ways in which countries offer citizenship to the rich, which is often overlooked both in the media and in academic circles. The way in which an investor programme is regulated could potentially turn this instrumental interest of the rich in possessing a passport of a country into stakeholder citizenship. In her initial contribution to this debate, Shachar

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highlighted the difference between ‘golden residence’ and ‘investor citizenship’ programmes. While the former require the investors to reside in their country of destination for a number of years and to undergo a standard naturalisation procedure (including the knowledge of language, customs, etc.) before becoming citizens, the latter is an exchange of a fixed amount of money and citizenship (most governments do run criminal record and due diligence checks of applicants). There is also a third mechanism for turning investors into citizens, which is discretionary naturalisation on grounds of national interest. These provisions exist in 22 out of the 28 EU Member States. Such discretionary naturalisation is the prerogative of the state and it is used only in a few cases annually. In several countries, including Austria, discretionary naturalisation has resulted in corruption and secret deals, which tells us that too much discretion can have adverse effects on citizenship.

Even with this in mind, we can find some support for Armstrong’s argument that investor citizenship programmes are not always wrong. That is, well-conceptualised ‘golden residence’ schemes may bring economic benefits to the state while also turning investors into genuine stakeholders. However, such ‘golden residence’ programmes should not be based merely on real estate purchase, as recently approved by Spain, and they should require more than a compulsory residence of only a few weeks per year as a mechanism of eventually qualifying for citizenship, as they do in Portugal. The argument here is that neither the possession of real estate nor the lack of residence can help the wealthy to establish a true connection with the destination country. Only ‘golden residence’ programmes that are based on multi-annual investment, jobs for citizens of the destination country, and compulsory residence for the investor before qualifying for citizenship, as is the case in Canada, help the investor to become integrated and interested in the well-being of the citizens of her or his adopted country.

By contrast, the program recently passed by the Maltese government is a ‘pure investor citizenship’ scheme, which differs from programmes in other EU countries that have recently adopted various ‘golden residence’ schemes (Bulgaria, Hungary, Portugal, Spain). Besides the crisis-struck Cyprus, which in May 2013 opened several routes to naturalisation on grounds of economic contribution to the state, Malta is the only other European state with such a scheme. The programmes in Malta and Cyprus are thus more similar to the ones in the Caribbean islands – Saint Kitts and Nevis, the Commonwealth of Dominica, and Antigua and Barbuda, all of which operate ‘investor citizenship’ schemes.

Two things make the Cypriot and Maltese programmes more attractive for investors than those of the Caribbean islands. First, in the former cases the naturalised investor will be granted visa-free travel to 151 (Cyprus) or 163 (Malta) states. This is considerably more than they would have by virtue of possessing the best-ranked Caribbean passport, that of Saint Kitts and Nevis which allows visa-free entry to 131 countries. Second, and more importantly, since in the EU the regulation of citizenship is decided by each Member State for herself, an individual may now obtain EU citizenship for roughly the price of a Porsche 918 Spyder. Hence the investor gains access to all the rights stemming from EU citizenship, including free movement and residence within the EU, the right to vote for and stand as a candidate in European Parliament and municipal elections, diplomatic protection, etc. This raises the question of whether it is proportionate and just that access to this array of rights is exchanged for the price of a sports car. Doesn’t this dilute the value of citizenship to a tradable commodity, voiding it of the sense of rights and duties and undermining citizens’ solidarity? If states sell citizenship, what the buyer gets will no longer look like citizenship at all.

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What is wrong with selling citizenship? It corrupts democracy!

Rainer Bauböck*

Like the Roman god Janus, whose head was displayed above city gates, citizenship has two faces: one looks outwards, the other one inwards. The external face turns to other states and demands that they recognise the country's passport as well as to citizens living abroad whom it promises the right to return and diplomatic protection. The internal face speaks to citizens as members of a democratic community. It tells them that, in spite of their different interests and identities, they are equal as individuals and collectively govern themselves through their right to vote. The two faces belong to the same head, but sometimes the stories that they tell become dangerously disconnected.

The European Union has strongly increased the external value of its member states' citizenships. It has expanded the right to return into freedom of movement throughout the Union. The EU passport is, moreover, a key that opens the doors of a large number of third countries for visa-free entry. Finally, EU citizenship offers now also diplomatic protection by other member states to EU nationals residing in third countries. When selling its passport for € 650,000 to non-resident foreigners, Malta intends to cash in on this European added value of its external citizenship. It is not hard to understand why this irritates EU institutions and other member states. Malta behaves like a member of a cooperative that sells membership to outsiders at a price that in no way reflects her own contributions.

Beyond the obvious unfairness in the division of monetary gains from the value of EU citizenship, member states also have reasons to be concerned about any one of them naturalising persons born and residing abroad without genuine links to the country. As Shachar and Dzankic point out, these people are likely to use their passports for other purposes than a "return" to the state whose citizenship they have obtained. In this respect, Italy, Hungary and Romania, whose ethnic citizenship policies have created hundreds of thousands of new EU citizens abroad, are worse sinners than Malta. What the Maltese and similar programmes do is to transform an inherited privilege of co-ethnic populations residing abroad into a global commodity.

This makes it quite natural to consider the external value of citizenship from a global perspective, as Spiro, Armstrong and Barbulescu do in different ways. Spiro regards the sale of citizenship as yet another symptom of its inevitable decline due to globalisation, alongside the increasing toleration of dual citizenship, as he has argued previously. While the instrumental value of citizenship of an EU member state for transnationally mobile populations has increased, citizenship as a "sacred bond" between an individual and a state has unravelled. Armstrong and Barbulescu look instead at citizenship through a lens of global (in)justice and conclude that the sale of EU passports is merely one instance – and not the most significant one – of how citizenship policies "both feed off, and make it harder to tackle, underlying global inequalities." This echoes Shachar's initial comment that we should be equally critical of the comparatively rare practice of putting up citizenship for sale and of "granting citizenship according to nothing but the fortuitous and arbitrary circumstances of station of birth".

I suggest that it is useful to consider the external and internal perspectives separately. From a global perspective, birthright citizenship may indeed look suspiciously arbitrary, although I would not regard it as a cause of global injustice. To see why, consider the EU as a regional model for a potentially more just global regime. In the EU, free movement and access to opportunities elsewhere is linked to citizenship in a member state, which is again in all countries based on birthright. So it is seems misconceived to point to birthright citizenship as the culprit that causes global social inequalities instead of blaming unequal resources, global economic governance and immigration control.

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Once we walk through the city gates and listen to the voice of Janus from the other side, our critique of citizenship for sale will change quite radically. Barbulescu asks rhetorically: “If all countries were equal in living conditions would the scheme be objectionable?” From inside a democratic community, the answer to this question must be an emphatic yes! To understand why, let us focus for a moment on the core political right of citizenship, the franchise in democratic elections. Isn’t it objectionable to sell the right to vote to outsiders? Suppose that, in reaction to critiques by the other EU states, Malta decides to sell the franchise in its national elections rather than its passports. The price it could achieve would be of course much lower, but would it be all right to do so? Let me hasten to say that Malta and Cyprus are among the very few European states that currently do not allow their citizens residing abroad to cast their vote in national elections. So while investors can get citizenship without taking up residence, they will need to move to these island states in order to vote. Yet this seems a fortuitous coincidence rather than a policy design.

The corruptive political influence of linking citizenship to investment can be nicely illustrated by the story of Frank Stronach, a billionaire of Austrian origins who made his fortune in Canada. Under Austrian law, Stronach lost his Austrian citizenship upon becoming a Canadian citizen. When he established European headquarters of his company in Austria, he was granted citizenship under a special provision that requires neither residence nor renunciation of another nationality and that has also been used to naturalise Russian oligarchs alongside famous artists and sportsmen on grounds of “extra-ordinary achievements in the interest of the republic”. Once he had retrieved his Austrian citizenship, Stronach started buying political influence by recruiting former politicians for his company. In 2012, Stronach bought himself also a political party that he called “Team Stronach” and ran an expensive election campaign. He made a bit of a fool of himself in TV debates and got fewer votes than expected, but there is now a party in the Austrian Parliament established by and named after an investor-citizen. Maybe Stronach should not have lost Austrian citizenship in the first place. But the way in which he was able to reacquire it through his investment opened the doors widely to his subsequent corruptive influence on Austrian politics.

Of course, citizenship-from-the-inside is not only about voting and being elected. I am not so sure that it requires loving your country, as Dzankic suggests. But it certainly means being treated as an equal member and treating others as equal members of a political community. Magni Berton also looks at citizenship from the inside but does not emphasize sufficiently equality among citizens. He is right that the state invests into citizens and citizens invest into each other. But citizenship status and rights must not be proportional to the investments citizens make, or even conditional on such investments.

Voting rights provide again the test. Throughout much of the 19th century, the franchise was still a class privilege. “No taxation without representation” also meant “no representation without taxation.” Only those who contributed to the state coffers had a right to be represented in the making of laws. This is no longer our vision of democracy. True, democratic societies have hardly become more egalitarian since then and, as Stronach’s example demonstrates, wealth can rather shamelessly buy influence in politics. Turning the status of citizenship itself into a marketable commodity would mean more than this. It would tear down a wall of protection that keeps social class from becoming, once again, a formal marker of inequality of citizenship rights and status. One could object that, once they are citizens, the votes of foreign investors will not formally count for more than everyone else’s. But it seems quite naïve to think that a club that starts to sell its membership at a price that only the ultra-rich can afford will keep treating its poorer members as equals.

Barbulescu makes an interesting point that “citizenship-by-investment largely contradicts the very recent efforts of states to re-substantiate citizenship through tests and integration requirements.” It seems indeed inconsistent to waive integration conditions for investors while at the same time insisting that citizenship can only be granted to foreign immigrants as a reward for their individual integration efforts. Yet from a democratic perspective both of these policies represent the same worrying trend: they link access to citizenship once again to social class. While income tests for naturalisation have an

explicit class bias, knowledge tests have an implicit one, since education and the capacity to learn for tests is strongly related to social class.

But isn't the way citizenship is obtained anyhow morally arbitrary? Why should those who have citizen parents or who have been born in the state's territory have a stronger moral claim to citizenship than foreigners who are ready to pay or invest? Why should even long-term residence count, if those who can naturalise on that basis have been pre-selected by immigration controls that do not offer the same chance to the rest of the world's population? These may be relevant questions from a global justice perspective. From an internal democratic perspective, they are wrongly asked. Long-term residence is what makes immigrants' relation to the political community equal to that of native citizens in the relevant sense and is therefore not at all an arbitrary criterion for access to citizenship as membership in a particular polity. The same can be said for *ius soli* and *ius sanguinis*. Instead of giving citizens specific privileges based on a claim to land or to parental inheritance, these birthright rules make them equal amongst each other by referring to the circumstances of birth that they share in common, be it birth in a territory or to citizen parents. Moreover, by providing individuals with citizenship at birth and for life, states protect them in a much stronger way than clubs who select their members based on present members' interests in their contributions or in choosing new ones who are like themselves. Selecting future citizens on grounds of either investment or income and knowledge tests departs fundamentally from the egalitarian thrust that underlies rules of birthright citizenship as well as residence-based naturalisation.

So how should the EU and its member states react to citizenship-for-investors laws? They should protest that these policies undermine solidarity between member states, but they should also protest against the internal hollowing out of democratic standards. As a union of democracies, the EU must be concerned when democracy is corrupted by the rule of money in any of its member states. Bribing officials is not the only way in which this happens. Selling citizenship is, too.

What Money Can't Buy: Face-to-Face Cooperation and Local Democratic Life

Paulina Ochoa *

Brief visit to Valletta: € 2,500. Maltese Passport (and visa-free travel to the United States and 163 other countries): € 650,000. Partaking in a democratic community built on principles of equality and solidarity: Priceless.

In her article, Ayelet Shachar argues a point similar to the tagline of Master Card's famous advertisement: 'there are certain things money can't buy, for everything else...' Yet, as Peter Spiro remarks, pointing it out in our current circumstances may appear as banal as a TV ad. The hoax in the Master Card ad is that the numbers appearing on screen are not presented as the price tag of the "priceless" item. Yet the ad also tacitly reminds us that we live in a society where the most "meaningful" experiences are, in fact, bought and sold all the time; a society where what *really* matters to the beautiful woman may well be the expensive ring's promise of future riches, not the engagement with her fiancé. The campaign exploits our fear that priceless moments would simply not happen if they were not preceded by hefty purchases. Indeed, we daily discover things that, in a democratic society, are not supposed to be for sale, and yet go to the highest bidder. For example, the work of such public servants as soldiers, prison wardens, and government social workers is today frequently given by governments to private contractors. And today, more and more countries are selling citizenship.

But does "everyone's doing it" make it *right*? I agree with Shachar that it ought not to happen: citizenship should not be for sale. However, I think that she has not chosen the best grounds to argue *why* it shouldn't. In her view, selling passports is wrong for many reasons, but what I take to be the most important are: first, because it undermines community; second, because it lets the economic sphere control the political sphere, and in doing so corrupts the value of citizenship. As to the first, Shachar argues, a person who has enough ready cash to buy citizenship in Malta has no incentives to establish relations of mutual trust and responsibility with other Maltese, so giving them a golden passport weakens a community built on solidarity and collective decision-making. As to the second, says Shachar, selling the privileges of citizenship brings economic inequality into the political sphere, thus undoing democracy's historic commitment to shield each citizen's political power from the effects of economic inequality. At first sight, these arguments seem overwhelming. Yet further reflection shows that they in fact prove too much. For if they were right, then we ought to forbid what I deem an unobjectionable practice: economic immigration by the poor.

Let's see how this could be so. On Shachar's argument, we object to selling passports, even when it is profitable, because the buyer's character and attitude undermines democratic institutions. A buyer of a golden passport is motivated to be a member for the wrong reasons: she is not seeking citizenship so as to establish relations of mutual trust and responsibility with Maltese. Notice, however, that this is also true of the economic immigrant who jumped the fence and worked illegally in the receiving country in order to pull herself out of poverty. In both cases the immigrant acts primarily according to her own interests, rather than any desire to build relationships of trust and mutual responsibility with her fellows. Both types of immigrants move money according to their transnational personal connections and concerns, both invest according to their personal needs. Both immigrants often bought their way in: either legally or illegally. Both value their new dual-citizenship status highly, and are not willing to forgo the advantages of either one, and both may spend huge amounts of money on immigration attorneys and fees to regularise their immigration status and get citizenship. So Shachar's own criterion, at least as presented, seems to rule out most economic immigration by the poor.

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Something seems amiss. A better argument against a golden passport, I think, would use a criterion that would unambiguously imply both that it is wrong to admit rich immigrants simply because they will pay big money, and that it is wrong to deny admission to the poor simply because of their economic hopes. Let's examine some candidates for such a criterion.

Could it be time? In Shachar's essay, there is a muted factor that does seem to explain why we should not make ability to pay sufficient for citizenship: Time. Both the rich and the poor immigrants pay for their new membership in one way or another, but the rich can get citizenship *fast*. The world's rich have a degree of mobility that mirrors the speed of capital. They can follow the money, and they profit from their well-heeled hyper-mobility. This, of course, gives them few incentives to build "long-term relations" and commitments "expanding beyond their life-span". So time might seem a good candidate for explaining why purchase shouldn't itself get you citizenship. Yet, as Chris Armstrong argues in his response, one can in a flash make deep commitments that do indeed seem to expand beyond one's life-span. He reminds us of foreign volunteer soldiers like the Lincoln Brigade, who enter a foreign war to defend a country that is not theirs. It takes them no time to make a deep and seemingly long-lasting commitment. So if we think our criterion needs ultimately to track long-term commitments, then this criterion seems not to work for all cases.

Could it be the depth of the roots, then? Here is another way to explain why it is wrong to admit the rich passport-buyer simply because of ability to pay. Let's say that the criterion should be how much and how deeply the would-be immigrant's life and concerns are and will be rooted in the new country. For poor immigrants invest their work and efforts in becoming a part of the new society they join, while it might seem that a rich jetsetter buying a passport need make no such effort. Yet economic investment can be a very deep tie, as Raul Magni Berton argues in his reply. Committing a big sum to a new country can be done in a flash, and indeed, it can be done without even visiting the country in question; but if the investment is serious, it shows commitment and concern for others, and it lays down deep roots. So depth-of-roots cannot adequately distinguish the golden-passport holder from the poor immigrant.

Could it then be physical presence? This is the candidate criterion I favour. One of Shachar's concerns is that the rich passport-buyers need hardly ever be present in the new country. Territorial presence is particularly important because it forces individuals to partake in a particular way of doing things. Standing in queues, letting others go through, gather in certain occasions, stay indoors at other times. This type of action is face-to-face, and requires commitment to local institutions and local life. *By being there*, a person must become part of a civic organisation requiring solidarity and trust. And by being present in a democratic action, one can show a commitment to a civic community without having to share ethnic or cultural ties. This way of coming into a civic organisation can be immediate (as in the case of the person who volunteers to defend a country), but it does distinguish between an immigrant who is truly invested in the new country's institutions, from one who has just engaged in a one-time uncommitted monetary transaction. And most importantly, physical presence and face-to-face interactions can explain why citizenship is valuable in itself: it allows us to have relations as political equals, regardless of economic status. If we award passports to those without any likelihood of ever being there, we undermine the relevant connections built on regular interactions and participation in the institutions that organise local life, which is, after all, where equality takes place.

At bottom, what makes the golden passport wrong is that it undermines political equality, not that it puts closed communities in question, or shatters the separations between the spheres of justice. What remains priceless is the active face-to-face partaking and building of democratic institutions on the basis of principles of equality and solidarity: that is what money can't buy.

If you do not like selling passports, give them for free to those who deserve them

Vesco Paskalev*

The Maltese idea to “sell” citizenships was met with almost universal criticism, not only within our forum discussion but throughout Europe. While it is difficult to disagree with most of the arguments against monetization of citizenship, in my view they all aim at the wrong target. It is not the sale of citizenship *per se* which violates principles of justice and democracy; it is the existing international system of inclusion and exclusion of third country nationals which is deeply skewed and denigrates the value of citizenship. For all that I know, even the ultra-rich do not easily throw € 650,000 to the wind, so a condition under which anyone would give huge amounts of money for a travel document is deeply troubling. It is not membership but mobility which is at issue. Moreover, as Paulina Ochoa aptly notes, not only the rich but also the poor seek naturalisation for economic rather than civic reasons.

Bauböck distinguishes two sides of citizenship – an internal and an external one. Focusing on the former, he persuasively argues that selling citizenship undermines democracy. In a similar vein, Dzankic notes that in some cases the very fact of putting a price to a good corrupts the good. As a decent republican I fully agree with both of them. But as Spiro notes, the corruption of *this* good may have started long ago for reasons which have nothing to do with the recent fashion of investor citizenship schemes. While the policy makers and academics were predominantly concerned with the internal aspect of citizenship, various forces – from the Schengen Agreement via Ryanair to Moneygram have brought the external aspect to the fore.

Is citizenship all about travel indeed, or about identity and democracy? A natural experiment occurred between Bulgaria and Macedonia. Most Bulgarians believe that Macedonians are actually ethnic Bulgarians, who happen to live in an artificial country because of some historic contingencies. Naturally, most Macedonians are annoyed (to put it mildly) by that suggestion and vehemently assert their Macedonian identity against Bulgarian imperialism. Yet, when Bulgaria joined the EU, Macedonians flocked to the Bulgarian consulates to apply for a passport. Suddenly, they were claiming that they are ‘of Bulgarian origin’ by the thousands. Very few of these people had any actual bonds with Bulgaria and it is difficult to believe that anyone had suddenly woken up to her or his true Bulgarian identity. Apparently their Macedonian self-consciousness was in harmony with a Bulgarian passport and the opportunities it gives to ‘Bulgarians abroad’.

I hasten to add that Macedonia tolerates dual citizenship; if people had to renounce their Macedonian citizenship in order to obtain a Bulgarian passport, the numbers could be very different. Yet, the story is telling. It shows how easy it is for people to claim certain origins when this is convenient despite of firmly holding on to a different identity, which in the Macedonian case has been explicitly constructed as excluding the Bulgarian one. For all the value we attach to citizenship, the relative weight of its internal aspect is by far superseded by that of its external dimension. When asserting that a passport is more about travel than about anything else I am not being cynical – most citizens do care about membership, too. But when your passport matters so much outside of your country, you are under pressure to adjust your priorities. Thus, in the extreme case, your passport may be completely unrelated to your emotional belonging. Virtually all countries in the world discriminate among those wishing to enter on the basis of the completely arbitrary facts of their birthplace and descent. It is this arbitrariness which corrupts the value of citizenship (and by implication of domestic democracy), not the availability of a bypass or two for a tiny minority, be it rich or poor.

So what should an EU Member State do in the face of the Maltese scheme if it is concerned with rescuing the value of citizenship as Shachar pleads? For sure, trying to prevent the Maltese from

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making some cash from a system which is already so unjust and distortive would not help much. Yes, selling citizenship does not do anything to help either, but if a wealthy European democracy is truly appalled by the idea of selling passports to the rich, why not start giving its passports for free to a more deserving crowd? The only decent response to the opening of a mobility corridor for the rich would be to open mobility corridors for the righteous – those who have shown exemplary civic virtue, have made sacrifices for democracy or human rights or are subject to outrageous persecution. A tentative list of candidates would include convicted Russian punks, jailed Egyptian protesters and Chinese dissidents, American whistle-blowers, Iranian adulterers facing stoning, etc. Certainly, one can immediately think about a number of problems that such a policy could create, yet if Raoul Wallenberg took the risk of handing out Swedish passports to save hundreds of Hungarian Jews from the Nazis, why shouldn't a proud member of the EU do something similar?

In practical terms granting citizenship to prominent civil rights activists can spare them from persecution at home and provide them with a mobility corridor to the Western world. Symbolically, it can become a way of recognition of their civic virtues and exploits (certainly, despotic regimes may frame it as evidence for treason). Critics are right to claim that the very fact that an immaterial value has a price tag undermines it, but the opposite can also be true – giving passports to highly esteemed figures can make these passports highly esteemed, too. If you are rich, go get a passport from Malta! If you are righteous, maybe you should be able to get a passport from say, Sweden. Comparing the existing investor citizenship schemes, the [Financial Times](#) feared that selling citizenship may start a race to the bottom. Why not try launching a race to the top instead?

Citizenship for Real: Its Hypocrisy, Its Randomness, Its Price

Dimitry Kochenov*

Peter Spiro's tactful diagnosis of the flaws in Ayelet Shachar's kickoff text to this forum is correct: Shachar fails to convince when arguing for saving citizenship against itself. (1) She understates the hypocrisy and randomness underlying any determination of citizenship. (2) She ignores the problem of *de facto* statelessness, which reveals a questionable understanding of discrimination. (3) She exaggerates the importance of the political dimension of citizenship and presents the link between citizenship and political participation as unproblematic. (4) Shachar claims that the sale of EU citizenship affects other member states, but this is perfectly legitimate since there is no breach of EU law involved. (5) There are multiple ways how to acquire EU citizenship which shows why Shachar's acceptance of naturalisation as a state-mandated purification ritual fails to capture reality. Overall, Shachar's argument against the Maltese policy does not stand. If we take democracy seriously, then it should be for the Maltese alone to set the price. I thus disagree also with Magni Berton when he claims that the high price at which Malta sells EU passports is problematic.

I.

There are many stories about how selling things is bad: land is not for sale; love is not for sale; salvation is not for sale. Such proclamations make one wonder whether the purpose of ethical high points is to totally contradict reality. Hypocrisy itself is difficult to sell as an argument: land can be bought, prostitution is often legal and some of the greatest art was sponsored by those who wanted to buy salvation for themselves. To insist that citizenship is not for sale is to ensure the perpetuation of the outright randomness of its conferral as well as hypocritical and self-righteous excuses lurking behind fundamental mechanisms of exclusions. Those boasting Italian great grandparents in Paraguay, members of Polish diasporas in Australia and elsewhere, large benefactors and talented sportsmen – all these people can become Europeans, however random the rules. But the critique focuses on those countries that offer citizenship for sale in a perfectly transparent way. It is wrong to pretend that any other principle than outright randomness is at the core of the assignment of citizenship statuses in today's world. Once the inevitable randomness of exclusion is admitted – as Shachar did in her book on the birthright lottery (Shachar 2009) – we need to ask what citizenship is *actually* about.

II.

Shachar is worried about any discrimination at the point of acquisition of citizenship. However, a strict non-discrimination approach would deprive citizenship of its main function, i.e. random exclusion of large parts of society. Crucially, both *de facto* and *de jure* aspects of exclusion must be taken into account, a point that Shachar ignores in her statement. The fact that many *de jure* citizens are *de facto* stateless, in the sense of not receiving protection by their state of origin or enjoying substantive rights to return there, is of crucial importance. Idealistic images of a citizenship of the past are based on misrepresentation of social facts, perpetuating an often repugnant *status quo* where plenty of people are failed by their states day after day. Thus real citizenship starts with the actual extension of rights and giving the voice to those who are already formally included: women, minorities, the poor and the weak: plentiful problems remain in this regard.

Naturalisation is but a second step which serves three functions: providing citizenship status to long-term resident immigrants, respecting and recognising citizens' family ties through special naturalisation rules for family members, and reinforcing the society with talent, money, inspiration and

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diversity – which translates into inviting the rich, the beautiful and the smart (sometimes these three categories overlap of course).

No confusion between different groups of applicants should arise: to ask that all follow the same path is rarely helpful. Arguing for making the rules as strict as possible for all misses the different purposes of conferring nationality in the first place. Be it sports, science, money or family, it is up to the national democratic process to determine the criteria. Crucially, there is no ethical point to be made in arguing against money when loving a citizen, expensive education, or muscular power can also do the trick. Money is no less random a criterion and this is exactly what citizenship is about. Real discrimination would be to sell a partial rather than fully fledged citizenship, as Tonga does when selling its “Tongan Protected Person Passport”, which is not recognised by many other states and does not entail a right to enter and settle in Tonga. The attractiveness of such a second class citizenship is clearly limited.

III.

Shachar overstates the actual importance of the political dimension of citizenship. In the age of post-heroic geopolitics plenty of people naturalise or cherish the nationality they already have for entirely different reasons. Indeed, the political aspect, rather than being at the core of citizenship, regrettably becomes the scapegoat for justifying refusals to extend the status to those who already belong to the society. The idea that only the right people participate in political life is so important that you will be discriminated, threatened with deportation, exploited and humiliated in order to protect the sacred body politic. The troubling truth is that more and more people do not care about politics, as opinion polls amply testify. And those who do can be politically engaged despite not having the formal status of membership – as the German citizen Daniel Cohn-Bendit was in Paris 1968. The basic presumption of the necessary connection between citizenship and political participation should be approached critically and is hardly defensible, especially in the EU (see the earlier [EUDO CITIZENSHIP forum on national voting rights](#) for EU citizens in other member states). Insisting on the political dimension misrepresents thus what citizenship is about and ruins many lives by blowing a luxury right to politics totally out of proportion for the sake of justifying random exclusion.

IV.

It is clear that, just as the passports of other micro-states, Maltese citizenship as such is of very little practical value apart from visa-free travel. All the rights it brings – to work and live in the EU, non-discrimination in the EU and diplomatic protection outside the EU (when was the last time you saw a Maltese embassy?) – are related to the EU and the EU only. Clearly, what the Maltese are selling is EU citizenship and they are quite right to do so, since Member States are fully competent in this field, as international and also European law teaches us. Rich newly-minted Maltese will satisfy all the formal requirements of the EU Citizenship Directive 2004/38, thus becoming ideal EU citizens in London and Paris.

Following the *Micheletti* and *Rottmann* decisions of the Court of Justice of the European Union, the principles of EU law should be respected – and they are, since it is unlikely that the number of Maltese investor-citizens will represent a problem in the EU context: the scale of sales will remain small – even compared with the extension of EU citizenship by other states where a connection with the state itself is unnecessary, such as turning Argentinians into Italians based on the romantic ideas of inter-generational continuity or distributing Hungarian passports in the Serbian province Voivodina. Importantly, there is nothing wrong at all with these practices which are democratic and legal and supply thus a strong argument in support of the Maltese law. Indeed, investing into your nationality is at least as random (read “sound”) as investing in a lawyer to discover your Italian heritage for the sake of claiming an Italian passport.

V.

EU citizenship provides the most vivid reminder of the radical shift in the meaning of citizenship that made it a more ethically acceptable institution. Non-discrimination on the basis of nationality – the very core of EU law – provides the litmus test for what national citizenship is really about in the EU today. France is prohibited from “loving” its own nationals more than, say, resident Estonians or Maltese. The stigmatising function of citizenship is thus deactivated: humiliation of a randomly proclaimed other is not any more an option, at least legally speaking, among EU Member States. Full belonging to a society is thus not subjected any more to an arbitrary approval, putting all the bizarre language, culture and other tests that states subject newcomers to in a very interesting perspective: the very existence of the EU disproves their validity and relevance. They consist in nothing else but purification through humiliation: the “others” language and culture is presumed as not good enough and social learning is dismissed, forcing people to waste their time by subjecting them to profoundly disturbing rituals (Kochenov 2011). The very success of EU citizenship is the strongest argument against these practices, which Shachar wants to see applied to all without questioning their effectiveness and common sense. Indeed, if a Romanian is good enough to be embraced by British society as equal, subjecting a Moldovan to any kind of tests is utterly illogical: the arguments of the protection of culture, language, etc. are simply devoid of relevance when more than half a billion EU citizens are exempted from them.

For the reasons above, I do not find Shachar’s arguments convincing. Maltese democracy should be respected. Distorted dreams of the past, just as contemporary hypocrisy, are not worth defending. From a purely legal perspective, Malta’s case is solid: EU law is unquestionably on its side. From a human perspective, if I could have done it, I would definitely have bought EU citizenship instead of naturalising, which I experienced as a deeply humiliating process.

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Trading citizenship, human capital and the European Union

David Owen*

In 2003 the brilliant Kenyan steeplechaser Stephen Cherono switched his allegiance to Qatar and took the name Saif Saaeed Shaheen. Under this name he has set a world record and won a number of global medals for Qatar which, alongside Bahrain, pioneered the explicit policy of recruiting athletes who have no prior connection to the state but whose human capital would contribute to its self-determined goals. Such practices are not entirely new – for example, the Australian and New Zealand national rugby teams (union and league) have maintained their standing in world rugby in part by actively recruiting young talent from the Pacific nations - Fiji, Papua New Guinea, Cook Islands, Tonga and especially Samoa – to the detriment of the national teams of those states. But, as with the case of Malta selling its citizenship for € 650,000, the policies adopted by Qatar and Bahrain are blatant in making explicit what was merely implicit in the rather widespread policies of other states, namely, the trading of access to citizenship for forms of capital (economic, cultural, political, etc.) held by individuals which the state deems valuable to acquire. Whether it is inducements to foreign millionaires (where other EU countries are playing catch up with long-standing UK policies) or to skilled workers in medical, finance or IT sectors, the immigration policies of states are perennially engaged in the practice of identifying valued forms of capital and facilitating the inward flow of such capital. The emigration policies of states exhibit similar patterns whether in terms of the deliberate creation of human capital for export markets (e.g., Indian medics and Filipino nurses) and/or the maintenance of thick links to diasporic communities to support trade, knowledge transfers, remittance flows and the recruitment of sporting talent. The state as a self-determining agent has a clear and well-established interest in structuring ‘access to citizenship’ in ways that support its goals, whether these goals concern economic development, health and social welfare, cultural standing or sporting glory. The legitimacy of the ways in which it pursues these goals is however another question.

For the states that compose the EU, we can distinguish three dimensions of democratic legitimacy that address, respectively, the composition of the demos of the state, associative obligations between member states and democratic obligations to non-members. Let’s take them in turn.

If we focus on the composition of the demos, then it is important to acknowledge the difference of selling citizenship in a global market with schemes that, as Ayelet Shachar rightly notes, simply facilitate residence for selected types of highly valued persons and hence the acquisition of citizenship via residence-based naturalisation procedures. As Bauböck, Dzankic and Ochoa all stress, the “golden residence permit” schemes (whatever other faults they may have) require a multi-year period of residence within, and hence subjection to, the authority of the state in question prior to, and as a condition of, the acquisition of citizenship. Such required residence grounds the claim to political equality that is given expression in access to membership of the demos.

Turning to the second dimension of democratic legitimacy of EU states, the associative obligations of member states, we can note that the explicit Treaty-based commitment to solidarity among these states has a specific implication for their democratic composition in that, normatively, it constrains states to treat their own citizenship (over which the EU has no – or via the Court of Justice of the European Union, very limited – competence) as integral to the democratic character of the EU. In this respect, Bauböck is surely right to highlight the point that selling national citizenship (and hence also EU citizenship) is incompatible with the associative obligations of member states as it admits persons to EU citizenship in all member states who do not have any genuine connection to any of these states. However, the scope of such obligations is not merely tied to such blatant examples of the commodification of citizenship but extends to the wider range of practices that are brought into focus

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by such extreme examples insofar as these undermine political equality with the EU by, for example, importing class and status differentials into access to citizenship.

The third dimension of democratic legitimacy for EU member states concerns those non-members whose morally significant interests are affected by the citizenship policies of these states. The requirement here is that these interests are impartially considered within the policy-making process. In contrast to Bauböck's distinction between democracy and global justice, I want to stress that this third dimension links the two and ties the concerns acutely raised by Barbulescu and, in more fatalistic mode, by Spiro directly to democratic legitimacy. As Barbulescu notes, the neo-liberalisation of citizenship that is expressed in practices of trading citizenship entails that the policy-making process does not give impartial consideration to all those whose morally significant interests are affected by these citizenship policies. Rather, the duty of justification owed to those affected is abrogated through a deliberate practice of partiality in which the rich and those who possess talents that are highly valued by the states in question are provided with unequal access to residence and hence to citizenship. Practices that support the emergence of transnational class and status stratification in which mobility rights become radically unequally distributed are not compatible with the democratic legitimacy of states or of the EU.

Oddly then we have reason to be grateful to states such as Qatar and Malta whose policies, in pushing to the neoliberal extreme, help bring into focus a wider range of policies that are hollowing out democratic citizenship from within.

Citizenship for Sale: Could and Should the EU Intervene?

Jo Shaw*

On 15 January 2014, the European Parliament will [debate](#) the issue of ‘EU citizenship for sale’ as a ‘topical subject’ in its plenary. The Council and the Commission will both make statements on the issue, and the debate will be the culmination of a process whereby numerous parliamentarians from various political groups (ALDE, Verts/ALE, PPE – although not the S&D group of which the Maltese Labour Party currently in government is a member) have addressed questions to the Commission and the Council and expressed their concerns about the trend towards selling citizenship.

Can such critiques rely on European law or should the case be argued politically? And if the latter, is the Commission or the European Parliament the right institution to take the lead?

Dimitry Kochenov has made the point that there does not appear to be a case to argue that the decision by Malta to ‘sell’ its citizenship – [whatever the price](#) – raises an issue of EU law. It is well established that the conditions under which the Member States provide for the acquisition or loss of their citizenship are a matter to be decided by these states, provided that the rules put in place observe the requirements of EU law. The 1992 *Micheletti* judgment of the Court of Justice of the EU established that Member States must recognise the ‘EU part’ of a person’s dual citizenship, as to do otherwise would deprive that person of the benefit of the free movement rights. In its 2010 *Rottmann* decision, the Court acknowledged that decisions on the *loss* of citizenship, where these would entail the loss of EU citizenship and thus deprive the person concerned of their rights and duties under that status, should be subject to a test of proportionality. In *Rottmann*, Advocate General Maduro did suggest a broader basis in the norms of EU law for constraining the actions of the Member States. He referred specifically to the case of mass naturalisations of third country nationals by a Member State undertaken without consulting the other Member States. Maduro argued that such practices might entail a breach of the duty of loyal or sincere cooperation contained in Article 4(3) of the [Treaty on European Union](#). According to that provision ‘The Member States shall facilitate the achievement of the Union’s tasks and refrain from any measure which could jeopardise the attainment of the Union’s objectives.’ But, as Kochenov notes, compared to the large numbers of Italian citizenships given out in Latin America to those demonstrating Italian ancestry, or indeed the effects of the external citizenship provisions of some of the newer Member States (e.g. Hungary in Serbia or Croatia in Bosnia and in many non-European countries where there are large Croatian diasporas such as in Australia), the effects of the Maltese provisions will be marginal in terms of numbers and thus have little impact on other Member States. The case for a legal obligation under the Treaties to moderate this type of national citizenship policy seems rather weak. It may be a mercantilist practice, but it is not arbitrary according to the norms of EU law.

So is that the end of it? Will the debate on 15 January be limited to the Commission rehearsing these legal points and pointing out its lack of competence in the matter, and MEPs wringing their hands about the ‘[abuse of rights](#)’ and the ‘[lack of respect](#)’ for other Member States which is said to be involved in the creation of new citizens by such means? And will objections to the actions of Malta (and potentially other Member States which have introduced variants of these schemes) have no more traction than objections to a Member State exploiting its own natural resources, or exporting things for profit that it is particularly good at making, even if these might have environmental costs (such as cheaply produced French nuclear power or large German cars)?

As the contributions to this Forum have shown, the proposal by Malta to sell citizenship is just one example of why and how (national) citizenships can be most effectively monetized precisely because those citizenships are more attractive to those who ‘invest’ (it does not matter whether by means of

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work, long residence and civic integration or by direct financial contribution to the national exchequer), because they confer the benefits of EU citizenship. EU citizenship thus connects the external and internal dimensions of citizenship and offers incentives to states to exploit citizenship (and associated rights such as residence or the right to work) as a tradable good in a market system.

If Malta's policy exploits EU citizenship in a way that does not conflict with EU law, should the European Parliament – as an institution rooted in the principle of representative democracy – not use the opportunity to reflect instead more deeply upon the meaning of (national and EU) citizenship in a compact between states such as the European Union?

In that context, a comparison of the position of the Commission and the Parliament can be instructive. The Commission – unlike the Parliament – can speak with one voice, and has been assigned executive and enforcement powers under the Treaties. So a standard argument based on the duty of Member States to comply with EU law involves trying to get the Commission to say something about a situation in a given Member State, perhaps as a precursor to doing something such as bringing an enforcement action. But time and again, the argument fails, precisely because the issue falls outside the scope of EU law.

The powers of the Commission to take such actions are often overestimated because observers have watched how it has dealt with accession states. However, the context of enlargement deceives us, because it is during that phase of pre-accession negotiations – and whilst states live in fear of being told they do not comply with the Copenhagen criteria in relation to democracy and fundamental rights – that the Commission can make pointed interventions in areas of national sovereignty, including citizenship. Changes to the citizenship regimes of many of the Western Balkan states can be attributed directly or indirectly to pressure from 'Europe'. Perhaps the most obvious example is that of [Macedonia](#), which changed its rules on acquisition of citizenship as one step towards a more consociational settlement involving the majority of ethnic Macedonians and the minority Albanian group. Similar effects via the implementation of national visa liberalisation roadmaps can be seen in Montenegro and Serbia. On the other hand, as the case of the controversial constitutional amendments in Hungary has shown, there is little the Commission can do to intervene in Member States, given the limitations of its [current enforcement instruments](#), however egregious would appear to be the effects of the amendments introduced upon the 'entitlement' of that particular state to be a full member of Europe's democratic community of states.

It is therefore not for the Commission to make the point that the creation of EU citizenship has indeed contributed to the hollowing out of national citizenship, not by taking away the prerogatives of national citizens (voting in national elections remains overwhelmingly reserved to national citizens only), but by incentivising its instrumentalisation for reasons of domestic gain (in Malta's case, a wish to improve the financial situation of a micro state buffeted by the effects of the Eurozone crisis).

But what about the European Parliament? As the democratically elected representative of the people(s) of the European Union and its Member States, and as a body elected on a franchise that deliberately goes beyond borders, the European Parliament can and indeed should take a careful look at the issues that the Maltese case raises. Yet it should do so not through a narrow focus on Malta, but rather through taking a sober look at the wider injustices and negative effects on democratic principles that may be highlighted by this newly identified dimension of the Fortress Europe construction (and how ironic it is, that Malta is also at the frontline of the *physical* Fortress Europe, as an island state located close to the southern shoreline of the Mediterranean sea).

'Intervention' is much too strong a word for whatever it is that the European Parliament could and should do on 15 January, when it debates the issue of EU citizenship for sale. But a first and wide-ranging reflection on some of the emerging consequences of EU citizenship for national democracies would at least be a start. 2013 was the year of the EU citizen. It did not do much to raise public awareness about EU citizenship and it ended with moves towards its commodification. Wouldn't it be appropriate for the European Parliament to start the new year with a real debate on the relation between national and EU citizenship?

Linking citizenship to income undermines European values. We need shared criteria and guidelines for access to EU citizenship

Hannes Swoboda*

The decision by the Maltese Parliament to offer Maltese citizenship – and consequently – EU citizenship to third country nationals who can afford to pay € 650.000 comes as a closure of the EU year of citizens and reflects a worrying trend in the conception of all those rights related to EU citizenship, including above all freedom of movement.

Malta is not an isolated case, though. As highlighted by other contributions to this forum, other EU Member States have in time come to link access to residence and hence – albeit indirectly – to citizenship to income or to economic investment, although the Maltese proposal goes a step further by introducing a direct and free gateway to citizenship purely based on a monetary payment.

Some may say that access to nationality is an exclusive competence of Member States and that the European Union has no right to interfere in these choices. From a purely legal perspective I would agree, but I believe we would miss the point if we did not see that, behind monetization of citizenship and residence, there is a vital political issue for the European Union to face, if we believe that Europe is more than just a wide single market.

The political debate about the so called "poverty migration" in the EU and on limitations to free movement for Romanian and Bulgarian citizens is just another side of the same coin. The supporters of the idea that "free movement has to be less free" base their belief on the assumption that free movement should be free for those citizens who have a suitable income and less free for those who haven't.

This questions the idea of citizenship as the core of a society, as the set of rights and duties defining active participation in the political, social and economic life of a community on an equal basis. And it questions the very idea of a European citizenship as a set of special rights connected to being a member of the European Union as a political Union, where individuals, notwithstanding their income and social position, can on an equal footing organise, participate in decisions in a wider European public space and feel part of a common project because that project is a collective benefit for all.

I would say that the very idea of the European Union as a community of values is put in question by these trends, particularly the idea that it is the duty of the EU to reinforce social cohesion, to eliminate discriminations and to provide a level playing field for the material exercise of the fundamental rights defined in the EU Charter.

I have often expressed the idea, including in the framework of EUDO debates, that access to EU citizenship needs to be expanded and not limited further, if we believe in making progress in the conception of a political and social Union.

I have often mentioned, for example, that many "new Europeans" already live, study, work in our societies and contribute to them – some have been born and raised in Europe – but still are limited in their access to citizenship. These fellow Europeans have to go through detailed and lengthy citizenship tests before they can hope to achieve naturalisation in a Member State and therefore be fully EU citizens. I am convinced that – should Member States go in the direction of a privileged gateway to national citizenship solely based on income – this would create an unacceptable discriminatory situation that is probably also incompatible with EU law as it currently stands.

This is why I believe that a serious reflection at EU level is necessary ahead of European elections this year – also taking stock of the debates that characterised 2013 as the Year of EU citizens – on

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which common and shared criteria and guidelines should guide access to national citizenship and hence to EU citizenship at national level.

I think this is a necessary and urgent discussion we need to face. The background for the trend in citizenship policies that we are currently witnessing is of course more complex and it has to do with the ongoing erosion of trust in institutions and with the fact that more and more among those who possess citizenship of the Union feel that they are not yet (or not fully) citizens, both at national and European level.

The real challenge is how European citizenship can be relaunched in a bottom-up process where EU citizens can enter the stage of the EU political arena, campaign for policy options, actively debate in a truly European public space and select legislators representing their views and working for their objectives.

If we don't want to leave a golden opportunity to Eurosceptics, nationalists and populists, we must seize the chance for a leap forward in the European process involving a much wider concept of citizenship than that defined in the letter of the EU Treaties.

Coda

Ayelet Shachar*

That the European Parliament will debate the sale of “golden visas” and “golden passports” on 15 January 2014 is a victory for democracy and a testament to the vital importance of the issues raised by this Forum Debate, with its rich and illuminating contributions.

The “selling of citizenship,” as many of my commentators have rightly noted, is indicative of larger and deeper transformations of our conception of political membership in a more globalized and competitive world. It is hoped that these tectonic changes will, on the whole, ultimately prove emancipatory and inclusionary. But placing a price tag on citizenship is not a step in that direction. Globally, it secures privileged access to membership for multimillionaires who can afford it, while excluding all others. Domestically, it strains the ties that bind us together, which may in turn lead to erosion of the civic bonds and practices that allow a democratic society not only to survive, but to thrive.

The grant of citizenship is, as a pure legal matter, a last bastion of sovereignty. This is precisely what makes cash-for-passport programmes so controversial. They may be formally permissible, but they are nevertheless open to ethical and political contestation. Laws do not only guide action. They also carry meaning and have an expressive function. The grant of citizenship in exchange for nothing but a large pile of cash sends a loud message in both law and social ethics about whom the contemporary market-friendly state gives priority to in the immigration and naturalisation line and whom it covets most as future citizens.

These pressures are felt everywhere, but Europe is unique. It has developed the world’s most advanced system of supranational-citizenship-in-action. In this system, when one member state “sells” national citizenship as a gateway to gaining Union citizenship, tension inevitably arises, since the state’s action in doing so also affects other EU member states as well as the very membership good at issue: European citizenship. For policymakers, there is an unfavourable track record to consider. Citizenship-by-investment schemes have in the past been closed down after concerns about their integrity led to the revocation of visa waiver policies in third countries. The programme set up by Grenada, for instance, was suspended after Canada imposed visa requirements on the island’s passport holders. It is unclear whether similar responses by third countries are to be expected here, but this is a risk factor that must be acknowledged if European member states proceed with their plans to grant immediate citizenship based on payment alone and without requiring grantees to ever live in, or even visit, the passport-issuing country.

The discomfort we may feel toward the mercenary-like quality of cash-for-passport programmes brings additional, hard questions to the forefront: is citizenship merely about rights, or also responsibilities? Could (and should) proportionality apply not only to the loss of citizenship but also to its acquisition? And what justification, if any, is owed (and to whom) if a member state’s action “cheapens” the fundamental status of Union citizenship, in this case by commodifying it?

We are dealing here with some of the most foundational aspects of our collective and public life. The decision to place “citizenship for sale” on the agenda for debate in the European Parliament and possibly the Commission as well is meaningful, both expressively and practically. It will offer a unique opportunity for all involved stakeholders, as renowned Yale legal scholar Owen Fiss once memorably put it, to think critically about the law as we know it, while imagining the law as it could be.

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